

U.S. Department of Labor

Office of Administrative Law Judges
525 Vine Street - Suite 900
Cincinnati, Ohio 45202



DATE: March 17, 1992

CASE NO.: 90-CLA-10

In the Matter of

SECRETARY OF LABOR

Plaintiff

v.

HERON LOPEZ d/b/a
RIO FRESH, INC.

Respondent

Before: RUDOLF L. JANSEN
Administrative Law Judge

ORDER OF DISMISSAL

By notice dated May 16, 1986, pursuant to Section 16(e) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(3)), and in accordance with 29 C.F.R. Part 579, a civil money penalty in the amount of \$1400.00 was assessed both jointly and individually against the respondents Heron Lopez, d/b/a Rio Fresh, Inc., P.O. Box 623, Lyford, Texas 78569, as a result of the employment of seven (7) minors in violation of the child labor provisions of Section 12 of the Act and regulations issued thereunder.

Respondents, within fifteen (15) days of receipt of that notice, timely filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, an exception to the determination that the violations for which the penalty was imposed occurred. On March 16, 1990, Plaintiff issued its Order of Reference whereby this case was transmitted to this office for a final determination of the violations for which the penalty was imposed.

On April 2, 1990, the Office of Administrative Law Judges issued a Notice of Docketing which required the parties to submit certain information within 30 days from the date of that notice. Both the Plaintiff and the Respondent, Rio Fresh, Inc., filed timely responses. No

response was received from Heron Lopez.

On January 13, 1992, I issued a Notice of Hearing and Pre-hearing Order by which this case was scheduled to be called for hearing on March 18, 1992 in McAllen, Texas. The Pre-hearing Order required the Respondent, Heron Lopez, and the other parties to submit certain material at least ten (10) workdays prior to the date of the scheduled hearing of this matter. The other parties complied with the Order but once again, Mr. Lopez has made no effort to produce the material required by the Pre-hearing Order.

On March 5, 1992, the Secretary of Labor filed a Motion for Default against Heron Lopez for his failure to comply with the informational requests of both the Notice of Docketing and my Pre-hearing Order. Rio Fresh, Inc. filed a response to the motion which voices no objection to the granting of the motion. On March 6, 1992, I issued an Order to Show Cause to Mr. Lopez requiring him to demonstrate good cause as to why he has failed to file a response to the Notice of Docketing and as to why he has failed to submit a pre-hearing statement. Mr. Lopez also did not respond to the Show Cause Order.

Accordingly, after reviewing the record and considering Respondent, Heron Lopez' failure to participate in this proceeding, IT IS ORDERED that the request for hearing of Heron Lopez is hereby dismissed under authority of 29 C.F.R. Sections 18.39(b), 18.29(a) and Fed. R. Civ. P. 41(b). As a result of this dismissal, Heron Lopez is ORDERED to pay a civil money penalty in the amount of \$1400.00 to the Secretary of Labor as described in the first paragraph of this order.

RUDOLF L. JANSEN
Administrative Law Judge